

Before A.K. Sikri, C.J and Tejinder Singh Dhindsa, J.

RITU—Appellant

versus

STATE OF HARYANA AND OTHERS—Respondents

LPA No. 1767 of 2012

March 4, 2013

A. Letters Patent, 1919 - Cl. X - Appointments - Waiting List - Haryana Staff Selection Commission - Offer of appointment made to five recommended candidates - One did not accept the offer of appointment and consequently it was offered to the first in the waiting list, but such offer was also not accepted - Offer of appointment to candidate in waiting list cancelled - Writ petitioner was second in the waiting list - Writ petition dismissed holding that waiting list was to remain valid for one year as per instructions dated 21.1.1998 - Order of dismissal challenged on ground that instructions

dated 7.10.1998 had supersede instructions dated 20.1.1998 - Instructions dated 7.10.1998 clarified that appointment from waiting list would be made only in eventuality of candidates from original select list not assuming charge - Instructions dated 7.10.1998 only clarificatory in nature and thus, would not supersede earlier instructions dated 20.1.1998 with regard to validity of one year of waiting/penal list - LPA dismissed.

Held, that the State Government had issued instructions vide memo dated 20.1.1988 on the subject of appointment of candidates out of the waiting list prepared by the Recruiting Agency. In terms thereof, the main list as well as waiting list were to remain valid for a period of one year from the date of recommendations and the list of remaining candidates, if any, after such period was to be scrapped. The subsequent instructions dated 7.10.1998 on the same very subject clarified that the appointments from the waiting list would be made only in the eventuality of a candidate from the original select list not assuming charge of the post or if any vacancy from such list remaining unfilled for any other reason. We are unable to accept the contention of the learned Senior counsel appearing on behalf of the appellant that the subsequent instructions dated 7.10.1998 would supersede the earlier instructions dated 20.1.1988 and thereby would lift the embargo as regards the validity of a period of one year of a waiting/panel list from the date of recommendations made by the Recruiting Agency. The subsequent instructions dated 7.10.1998 were only clarificatory in nature and issued with a clear objective of operating the waiting list only to the extent of the original advertised vacancies. We, accordingly, hold that insofar as the validity period of one year of the waiting/panel list is concerned, the instructions dated 20.1.1988 would still hold the field.

(Para 7)

B. Letters Patent 1919, Cl. X - Haryana Staff Selection Commission - Appointments - Waiting List was to be valid for one year as per instructions dated 20.1.1998 - Offer of appointment made to five recommended candidates on 8.4.2010 - One did not accept the offer of appointment - Clear stipulation in the offer of appointment to the effect that a candidate must assume charge of his/her duty within 15 days, failing which the offer of appointment was to be treated as cancelled - Appointing Authority cancelled the

said appointment after a period of almost eight months on 12.1.2011 - Consequently it was offered to the first in the waiting list on 28.1.2011, but such offer was also not accepted - That offer was cancelled on 15.2.2011 - Writ petitioner was second in the waiting list - Plea taken before writ Court that the waiting list had expired - Held, it was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment - Had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations - Inaction on the part of the State Government in not having cancelled the offer of appointment made to candidate in the original select list within a period of 15 days as per stipulation contained in the offer of appointment itself has clearly defeated the very objective for which the waiting/panel list had been prepared - Action of the Appointing Authority suffers from the vice of arbitrariness - As such, cannot sustain - Respondent-Department directed to issue appointment letter to the appellant (writ petitioner) within a period of 30 days.

Held, that the offer of appointment was made to the five recommended candidates on 8.4.2010. Smt.Manju Rani chose not to join and the clear stipulation in the offer of appointment was to the effect that a candidate must assume charge of his/her duty within 15 days, failing which the offer of appointment was to be treated as cancelled. The appointment of Manju Rani was, however, cancelled after a period of almost eight months, vide order dated 12.1.2011. Consequently, an offer of appointment was made to a candidate in the waiting list, i.e. Smt.Kamlesh Kumari, on 28.1.2011 and which also cancelled on account of not having been accepted on 15.2.2011. There has been a clear inaction on the part of the respondent-Department/ Appointing Authority in the matter. The offer of appointment in favour of Manju Rani having been made on 8.4.2010 and having not been accepted was liable to be cancelled in the month of April, 2010 itself. It would not be open for the Appointing Authority to have sat on the matter for a period of eight months and thereafter to turn around and to confront the appellant with the defence that the validity of the waiting/panel list has since expired.

Further held, that it was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere impanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt. Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations i.e. 27.1.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.

(Para 11)

Further held, that even otherwise, the very objective of preparing a waiting/panel list and for such list to be kept operative for a specific period is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period.

(Para 12)

Further held, that in the present case, the inaction on the part of the State Government in not having cancelled the offer of appointment made to Smt. Manju Rani within a period of 15 days as per stipulation contained in the offer of appointment itself has clearly defeated the very objective for which the waiting/panel list had been prepared in which the name of the appellant duly figured.

(Para 13)

RK Malik, Senior Advocate with Samrat Malik, Advocate, *for the appellant.*

BS Rana, Additional Advocate General, Haryana.

TEJINDER SINGH DHINDSA, J.

(1) The instant Letters Patent Appeal is directed against the judgment, dated 6.10.2012, passed by the learned Single Judge in Civil writ Petition No.5980 of 2011 whereby the claim of the appellant seeking appointment to the post of Hindi Teacher has been rejected.

(2) Certain facts which are not in dispute would require notice. The Haryana Staff Selection Commission issued advertisement No.6/2006 inviting applications for filling up 405 posts of Hindi Teachers. Out of the total of 405 posts, 15 were reserved for ex-Servicemen (General) category. A further breakup was provided whereby five posts were reserved for ex-Servicemen (General) Female category. As per Haryana Government instructions dated 26.7.1984, a reservation to the extent of 2% posts in Class I, II, III and IV in direct recruitment was provided for the children and grand-children of Freedom Fighters subject to the condition that such reservation would be available only if the quota reserved for ex-Servicemen remains unfilled on account of non-availability of suitable ex-Servicemen or their dependents. The appellant is the grand-daughter of a Freedom Fighter. She had submitted her application for the post of Hindi Teacher and had subjected herself to the process of selection in pursuance to the advertisement bearing No.6/2006. The respondent-School Education Department received the recommendations from the Staff Selection Commission on 27.1.2010, in terms of which, five candidates were recommended for appointment against the ex-Servicemen (General) Female category and the names of two candidates including that of the appellant figured in the waiting list. Accordingly, the offer of appointment was made to the five recommended candidates belonging to the ex-Servicemen (General) Female category. Out of such five candidates, one Manju Rani did not accept the offer of appointment and the respondent-Department cancelled her appointment vide order, dated 12.1.2011. Consequently, the offer of appointment was made to Smt. Kamlesh Kumari whose name figured in the waiting list vide letter, dated 28.1.2011, but such offer was also not accepted and as such, the offer of appointment to Kamlesh Kumari was cancelled on 15.2.2011. It

is against such back-drop that the appellant being the second candidate in the waiting list staked her claim for appointment to the post of Hindi Teacher by filing Civil Writ Petition No.5980 of 2011 being a selected candidate against a post reserved for the ex-Servicemen (Female) category, the same having remained unfilled.

(3) The writ petition has been dismissed by the learned Single Judge on the reasoning that the validity of the waiting list in which the name of the present appellant figured was to remain valid for one year from the date of recommendations made by the Haryana Staff Selection Commission as per instructions dated 20.1.1988 and since such period stood expired on 26.1.2011, the claim of the petitioner cannot be entertained. The operative part of the impugned judgment dated 6.10.2012 is in the following terms:

"As per the instructions dated 20.1.1988 (produced in Court), the waiting list shall remain valid for one year from the date of recommendation. As per the respondents, the recommendations were received by the Department from the Commission on 27.1.2010 and, therefore, the life of the select list would expire prior to and in any case on 26.1.2011. Even the offer of appointment given to Kamlesh Kumari on 28.1.2011 was in violation of the instructions dated 20.1.1988, issued by the Government of Haryana, and, therefore, even if a cancellation which has accrued of the said offer of appointment, vide order dated 15.2.2011 (Annexure P-4), would not confer any right upon any candidate who was either in the main select list or in the waiting list, what to say of a person who belongs to some other category for which no specific reservation has been made and was to be given appointment in case of candidate from the main category was not available. In the present case, posts were reserved ESM category and as the petitioner belongs to the freedom fighter category, she would have a right of appointment only if the posts remain unfilled from the ESM category and that too before the life of the recommendation list expired. Petitioner does not have any right in the light of the specific instructions dated 20.1.1998 which debars appointment beyond a period of one year from the date of recommendations by the Commission."

(4) Mr. RK Malik, learned Senior counsel appearing on behalf of the appellant, contends that the claim of the appellant has been rejected only on the ground of the validity of the waiting/panel list having expired in the light of instructions dated 20.1.1988. It has been argued that subsequent instructions dated 7.10.1998 had been issued which envisaged that appointments were to be restricted to the extent of advertised vacancies and the appointment from waiting list would have to be made if any candidate from the original select list does not assume charge or any vacancy remains unfilled for any other reason. The contention raised is that the subsequent instructions dated 7.10.1998 have superseded the earlier instructions dated 20.1.1988 and in the light of the fact that one vacancy pertaining to the ex-Servicemen (General) Female category having remained unfilled, the appellant was vested with the right to be appointed against such vacancy in the light of instructions dated 7.10.1998. It has also been argued that in case, all the actual advertised posts are not to be filled up in spite of suitable selected candidates being available, then the very purpose of advertising the same would stand obviated. Learned counsel has further urged that the Appointing Authority has acted arbitrarily inasmuch as Manju Rani having been recommended for appointment by the Commission and she having not accepted the offer of appointment, it was obligatory for the Appointing Authority to have cancelled such offer of appointment within a period of 15 days and make an offer to the candidate next in order of merit. It has been argued that if such exercise had been carried out diligently, then the appellant would have secured appointment within the life span stipulated for a waiting/panel list even as per the earlier instructions dated 20.1.1988. Learned senior counsel has also raised a plea of discrimination by advertising to documents at Annexures P6 and P7, that had been placed on record before the writ court, to contend that in pursuance to the same very process of selection, appointments have been effected to the post of Hindi Teacher as late as on 8.9.2012.

(5) Per contra, learned State counsel has defended the impugned judgment in terms of arguing that the subsequent instructions dated 7.10.1998 were only supplemental in nature to the earlier instructions dated 20.1.1988 and the same would require to be read jointly and not in isolation of each other. Learned counsel would argue that the waiting/panel list was to remain alive for a period of one year from the date of recommendations and in

the light of the fact that the Department had received the recommendations from the Commission on 27.1.2010, the right, if any, of the appellant for seeking appointment to the post of Hindi Teacher on account of her name figuring in the waiting/panel list stood extinguished on 26.1.2011 itself. It has also been argued on behalf of the State that a selection waiting/panel list is merely a list of candidates found suitable and the same does not clothe such candidates with any indefeasible right of appointment. Learned State counsel would contend that the recommendations of the respondent-Commission were merely directory in nature and were, therefore, not enforceable by way of issuance of a writ of mandamus under Article 226 of the Constitution of India.

(6) We have heard learned counsel for the parties at length and have perused the pleadings on record.

(7) The State Government had issued instructions vide memo dated 20.1.1988 on the subject of appointment of candidates out of the waiting list prepared by the Recruiting Agency. In terms thereof, the main list as well as waiting list were to remain valid for a period of one year from the date of recommendations and the list of remaining candidates, if any, after such period was to be scrapped. The subsequent instructions dated 7.10.1998 on the same very subject clarified that the appointments from the waiting list would be made only in the eventuality of a candidate from the original select list not assuming charge of the post or if any vacancy from such list remaining unfilled for any other reason. We are unable to accept the contention of the learned Senior counsel appearing on behalf of the appellant that the subsequent instructions dated 7.10.1998 would supersede the earlier instructions dated 20.1.1988 and thereby would lift the embargo as regards the validity of a period of one year of a waiting/panel list from the date of recommendations made by the Recruiting Agency. The subsequent instructions dated 7.10.1998 were only clarificatory in nature and issued with a clear objective of operating the waiting list only to the extent of the original advertised vacancies. We, accordingly, hold that insofar as the validity period of one year of the waiting/panel list is concerned, the instructions dated 20.1.1988 would still hold the field.

(8) The question that now arises for consideration is as to whether there has been any arbitrariness in State action in the present case?

(9) The admitted facts which are glaring in nature would require recapitulation. The recommendations of the Haryana Staff Selection Commission were received from the respondent- Department on 27.1.2010. Five candidates had been duly recommended against the five vacancies earmarked for the ESM (General) Female category. The names of two candidates including that of the appellant figured in the waiting list. The offer of appointment was made to the five recommended candidates on 8.4.2010. Smt. Manju Rani chose not to join and the clear stipulation in the offer of appointment was to the effect that a candidate must assume charge of his/her duty within 15 days, failing which the offer of appointment was to be treated as cancelled. The appointment of Manju Rani was, however, cancelled after a period of almost eight months, vide order dated 12.1.2011. Consequently, an offer of appointment was made to a candidate in the waiting list, i.e. Smt. Kamlesh Kumari, on 28.1.2011 and which also cancelled on account of not having been accepted on 15.2.2011. There has been a clear inaction on the part of the respondent-Department/Appointing Authority in the matter. The offer of appointment in favour of Manju Rani having been made on 8.4.2010 and having not been accepted was liable to be cancelled in the month of April, 2010 itself. It would not be open for the Appointing Authority to have sat on the matter for a period of eight months and thereafter to turn around and to confront the appellant with the defence that the validity of the waiting/panel list has since expired.

(10) A somewhat similar and relevant issue came up for consideration before the Hon'ble Apex Court in *RS Mittal v. Union of India*, 1995(3) SCT 284. The matter pertained to the selection and appointment of candidates for appointment to the post of Judicial Member, Income Tax Appellate Tribunal. The duly constituted Selection Board had prepared a panel of selected candidates which included the name of the appellant therein, namely, RS Mittal and the recommendations were sent on 25.1.1988 to the Central Government for consideration. The Central Government, however, did not make any appointment and issued fresh advertisement on 22.2.1990 inviting applications for the same very posts. Such action was sought to be defended on behalf of the Union of India on the plea that the life of the panel was for a period of 18 months and the same stood expired in July

1989 itself. Deprecating the stand taken on behalf of the Union of India and holding that the appointment should have been offered within a reasonable time of the availability of the vacancy and thereafter to the next candidate, it was observed in the following terms:

“It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government’s approach in this case was wholly unjustified.”

(11) Adverting back to the facts of the present case, it was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere impanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt. Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to

the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations i.e. 27.1.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.

(12) Even otherwise, the very objective of preparing a waiting/panel list and for such list to be kept operative for a specific period is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period. A reference in this regard can usefully be made to the judgments of this Court in *Ajmer Singh v. State of Haryana and others*, 1997(1) CLJ (Service) 86 and *Ragbir Chand Sharma v. State of Punjab*, 1992 (1) RSJ 195.

(13) In the present case, the inaction on the part of the State Government in not having cancelled the offer of appointment made to Smt. Manju Rani within a period of 15 days as per stipulation contained in the offer of appointment itself has clearly defecated the very objective for which the waiting/panel list had been prepared in which the name of the appellant duly figured.

(14) For the reasons recorded above, we allow the instant appeal and set aside the impugned judgment dated 6.10.2012 passed by the learned Single Judge in Civil Writ Petition No.5980 of 2011. We further direct that the respondent-Department shall issue appointment letter to the appellant for the post of Hindi Teacher within a period of 30 days from the date of passing of this judgment. There shall, however, be no order as to costs.

(15) Appeal allowed.